

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:	
COMPLAINT OF HANCOCK COUNTY HEALTH SYSTEMS	DOCKET NO. FCU-2013-0005

**ORDER GRANTING, IN PART, AND DENYING, IN PART,  
REQUEST FOR CONFIDENTIAL TREATMENT FILED FEBRUARY 3, 2015,  
RESPONDING TO MOTION TO REMOVE CONFIDENTIALITY DESIGNATIONS,  
AND CLARIFYING JULY 1, 2016, ORDER**

(Issued August 3, 2016)

**FEBRUARY 3, 2015, MOTION FOR CONFIDENTIAL TREATMENT**

On January 16, 2015, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed with the Utilities Board (Board) a “Report on Investigation” (Report) in this proceeding detailing what it learned from an investigation of issues relating to call completion problems experienced by consumers in rural areas of Iowa. In this particular proceeding, a representative of Hancock County Health Systems (HCHS) in Britt, Iowa, filed a complaint with the Board on January 15, 2013, alleging that HCHS had experienced problems completing telephone calls made from its main health clinic campus to outlying telephone numbers within the HCHS telephone service area. The complaint described problems completing calls, including calls that did not ring and calls that were not answered. The Board docketed the complaint for further investigation and

assigned the matter to its administrative law judge who conducted the proceeding and required OCA to file the Report.

OCA attached to its Report data response exhibits, including exhibits containing responses from Intelpeer, Inc. (Intelpeer), a company that was involved in the calls at issue in this proceeding that was later acquired by Airus, Inc. (Airus). OCA filed public and confidential versions of its Report and the exhibits. Certain portions of the Report refer to the data request responses Intelpeer provided to OCA. On February 2, 2015, OCA filed a motion to remove the confidentiality designations on all parts of the Report which were redacted based on confidentiality designations made by the companies submitting responses to data requests. The materials the companies designated as confidential are shown in the Report in brackets.

On February 3, 2015, Airus filed a motion for confidential treatment of the exhibits pertaining to Intelpeer which were filed with OCA's Report and of portions of the Report that refer to information from the exhibits designated as confidential. Airus filed the motion for confidential treatment pursuant to the Board's rules at 199 IAC 1.9(5) and 1.9(6) and Iowa Code § 22.7. Airus supported its motion for confidential treatment with the affidavit of Ms. Julie Oost, the company's Vice President for Regulatory Affairs and Contracts.

Airus explained that the confidential information includes the identities of third-party telecommunications carriers with which Airus has contracts for service, specific information about those contracts, including pricing, and competitively sensitive

information about the company's internal policies and procedures which Airus considers to be confidential trade secret information under Iowa Code § 550.2(4). Airus asserted the information derives independent economic value from not being generally known to or readily accessible by competitors, that the company does not disclose the information publicly, and that release of the information could harm the company's business operations and those of the vendors doing business with Airus.

#### **OCA'S FEBRUARY 4, 2015, PARTIAL RESISTANCE**

On February 4, 2015, OCA filed a partial resistance to the request for confidential treatment. OCA stated that its report was based on discovery responses from Impact and the other companies involved in the rural call completion proceedings before the Board. OCA explained that the Report was heavily redacted because of confidentiality designations made by the companies, which were made according to protective procedures OCA agreed to follow regarding the information offered by the companies in responding to OCA data requests. According to OCA, those procedures allowed OCA to contest the confidentiality designations. OCA asserted that persons reading the public version of the Report would not be as able to understand the causes of the call completion problems or understand possible solutions as they would if the confidentiality designations were removed. OCA argued it would be difficult for the presiding officer to prepare an effective public

decision addressing the call completion problems and possible solutions without disclosing the material which has been redacted.

OCA challenged Airus' assertion that the confidential exhibits qualify for confidential treatment. OCA argued the purpose of Iowa Code chapter 22 is "to open the doors of government to public scrutiny," *Iowa Film Production Services v. Iowa Dep't of Economic Development*, 818 N.W.2d 207, 217 (Iowa 2012), and that under Iowa Code chapter 22 there is a presumption of openness and disclosure and that the exemptions from disclosure are narrowly construed. *City of Riverdale v. Diercks*, 806 N.W.2d 643, 652 (Iowa 2011).

OCA identified the following portions of its Report which referred to the information designated as confidential by Airus: Paragraphs 15, 17, 18, 20, 21, 22, 24, 25, 26, 27, 29, 30, and Footnotes 9, 12, 13, 14, and 28. According to OCA, Airus did not provide the necessary hard facts and specific allegations to establish that the information qualifies as trade secrets, i.e., a formula, pattern, method, technique or process that derives independent economic value from not being generally known, or that would show that public disclosure of the information would give advantage to competitors. OCA argued that public disclosure of the information would serve a public purpose by aiding the public's understanding of the rural call completion problem. OCA explained it did not seek removal of the confidentiality designations on the exhibits OCA filed with its Report, but reserved the right to ask that those designations be removed in the future.

**AIRUS' RESPONSE TO OCA'S RESISTANCE,  
RESISTANCE TO MOTION TO REMOVE CONFIDENTIALITY DESIGNATIONS**

On February 23, 2015, Airus responded to OCA's partial resistance and provided a supplementary affidavit of Ms. Oost. Airus argued that Iowa law protects business records and methods of doing business from public disclosure and that the definition of trade secret is broadly construed and includes many types of business information, citing *Economy Roofing & Insulating Co. v. Zumaris*, 538 N.W.2d 641, 646-47 (Iowa 1995); *US West Communications, Inc. v. Office of Consumer Advocate*, 498 N.W.2d 711, 714 (Iowa 1993.) Contrary to OCA's assertion that disclosure of the materials designated as confidential is in the public interest, Airus argued that the causes and solutions to call completion problems will be identified through analysis by technicians operating the public switched telephone network, not the public.

Airus pointed to the statements made in both affidavits supporting the request for confidential treatment, arguing they include hard facts and specific allegations demonstrating the confidential information constitutes trade secrets. Airus asserted that the information is confidential and proprietary; derives independent economic value from not being generally known to, and not readily ascertainable by proper means by Airus' competitors; that Airus does not disclose the information and uses reasonable care to maintain its secrecy; and that disclosure of the information could harm Airus' business operations and give its competitors an advantage.

In the supplementary affidavit, Airus provided the following additional description of the portions of the Report it seeks to protect from public disclosure:

Paragraph 15 contains information about the document retention policies of both Airus and Intelepeer.

Paragraph 17 contains information about Intelepeer's unique and proprietary procedures for responding to trouble tickets.

Footnote 9 contains information about Intelepeer's call routing process. Airus stated this information describes its unique business operations. Airus argued that the identity of intermediate carriers in a call path is confidential information it does not disclose except pursuant to a judicial process.

Paragraphs 18 and 20 and Footnote 12 contain information about Intelepeer's investigation of and response to the HCHS complaint. Airus argued the specific methods and procedures used in investigating and responding to the HCHS complaint are confidential trade secrets.

Paragraph 21 contains information about the pricing of the company's wholesale services, which Airus argued is competitively sensitive and unique to Airus.

Paragraph 22 includes information describing Intelepeer's investigation of the HCHS trouble ticket. Airus argued the methods and procedures for the investigation are confidential trade secrets.

Paragraph 24 and Footnote 13 contain information about other failed calls to the Kanawha exchange which Airus described as confidential trade secret information.

Paragraph 25 contains information about whether Impact had been removed from call routing on calls other than those to Kanawha. Airus argued this information about Airus' investigation of and response to the HCHS complaint is confidential trade secret information.

Paragraph 26 contains provisions of the contract between Intelepeer and Impact.

Paragraph 27 contains information describing Intelepeer's testing procedures.

Paragraph 29 and Footnote 14 describe a metric used to evaluate call performance. Airus stated it does not publicly disclose this information which it described as competitively sensitive.

Paragraph 30 includes information about discussions between Airus, Intelepeer and the Federal Communications Commission (FCC).

Footnote 28 contains a discussion about another company that is not a party to this proceeding. Airus stated it does not publicly disclose this competitively sensitive information.

On February 24, 2015, Airus filed a resistance to OCA's motion to remove confidentiality designations. Airus explained that its response to OCA's resistance to the motion for confidential treatment also serves as its resistance to OCA's motion to remove confidentiality designations.

### **OCA REPLY, AIRUS' SUR-REPLY**

On February 24, 2015, OCA replied to Airus' response. OCA argued that Airus overstated the degree to which a company's records are recognized as trade secrets. Citing *US West Communications, Inc. v. Office of Consumer Advocate*, 498 N.W.2d 711, 714-15 (Iowa 1993), OCA argued that treatment of business information as trade secrets depends on the company meeting its burden to prove that the records have independent economic value. According to OCA, Airus' supplementary affidavit did not provide the required specific allegations and hard facts showing that the information Airus seeks to protect from public disclosure constitutes trade secrets. OCA stated that most of the information Airus seeks to protect from public disclosure relates to trouble tickets, the steps Airus took to investigate and respond to problems, and the identity of downstream carriers. OCA contended that Airus did not allege that the company's process for investigation was unique nor did it allege that the identity of a particular carrier is known only to Airus or Intelepeer. OCA noted that it had withdrawn its request to remove the confidentiality designation from Paragraph 29 and Footnote 14.

On February 26, 2015, Airus filed a sur-reply to OCA's reply asserting that if certain portions of OCA's Report were publicly disclosed, its competitors could mine the information and use it to identify Airus' business plans, methods of operation, vendors, customers, and pricing. Airus asserted that requiring it to disclose its confidential information would not assist the public in understanding call completion problems and would not resolve the issue.



## **DISCUSSION**

The Board has reviewed Airus' request for confidential treatment, OCA's resistance and request to remove confidentiality designation, subsequent replies, and the relevant exhibits and paragraphs in the Report.

### **A. Request for Confidential Treatment of Exhibits Attached to OCA's Report**

Based on Airus' request and affidavits and OCA's representation that it did not ask the Board to remove the confidentiality designations on the exhibits, the Board will grant Airus' request for confidential treatment of the exhibits attached to OCA's January 16, 2015, Report pursuant to Iowa Code § 22.7(6).

### **B. Airus' Request for Confidential Treatment of Portions of OCA's Report**

Airus asked for confidential treatment of the portions of OCA's Report and Reply which refer to Impact's confidential exhibits. Because OCA has withdrawn its request that the confidentiality designations be removed from Paragraph 29 and Footnote 14,<sup>1</sup> the Board will grant Airus' request for confidential treatment of the bracketed material in these portions of the Report pursuant to Iowa Code § 22.7(6).

The Board will grant Airus' request for confidential treatment of Paragraph 15, which Airus described as containing information about document retention programs of Airus and Intelepeer, pursuant to Iowa Code § 22.7(3). The Board finds this

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<sup>1</sup> See OCA's February 24, 2015, "Reply on Motion to Remove Confidentiality Designations (Airus)," p. 3, n. 2.

information about the company's internal business practices constitutes trade secret information.<sup>2</sup>

The Board will grant Airus' request for confidential treatment of the bracketed material in Paragraph 17 pursuant to Iowa Code § 22.7(3). The bracketed materials describe the company's process of investigating a call completion problem and explain how the company made certain routing decisions. These materials describe the company's internal business and decision-making processes.

The bracketed material in Footnote 9 contains specific information about equipment used by the company in call routing. The Board will grant the request for confidential treatment of this information pursuant to Iowa Code § 22.7(3).

The bracketed materials in Paragraph 18 contain general statements about Intelepeer's investigation and awareness of complaints. The Board will deny Airus' request for confidential treatment this information. Airus has not established that these materials include trade secret information.

The Board will grant Airus' request for confidential treatment of the bracketed materials in Paragraph 20 pursuant to Iowa Code § 22.7(3). The Board finds that Airus has established that the information in this paragraph constitutes trade secret information about Airus' business practices, i.e., the steps the company took in response to a call completion problem.

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<sup>2</sup> In another call completion case before the Board, *In re: The Complaint of Carolyn Frahm*, Docket No. FCU-2013-0007, OCA included the same information in the report OCA prepared in that proceeding. OCA did not object to Airus' request for confidential treatment of the information in Docket No. FCU-2013-0007.

The bracketed materials in Paragraph 21 contain Intelepeer's response to a data request about the financial consequences to the company of a routing change. The Board will grant Airus' request for confidential treatment of this information pursuant to Iowa Code § 22.7(3). The Board finds that Airus has established that the information in this paragraph constitutes trade secret information about Airus' business practices, i.e., the company's call routing procedures.

The Board will deny Airus' request for confidential treatment of the bracketed materials in Paragraph 22. These materials contain Intelepeer's response to a question about what caused a call completion problem. Airus has not established that the information constitutes a unique business practice or method entitled to protection from public disclosure. The Board will also deny the request for confidential treatment of Footnote 12, which contains limited information about Intelepeer's response to a data request asking for information about Intelepeer's response to a call completion problem.

The bracketed material in Paragraph 23 specifies the number of times a carrier removed Intelepeer from call routing based on a trouble report regarding a call completion problem. Airus designated Paragraph 23 as confidential but did not specifically mention Paragraph 23 in its motion for confidential treatment or the affidavits, nor did OCA mention this paragraph in its partial resistance or other filings. It appears that Airus intended its motion to cover all portions of the OCA's Report that were based on information in the confidential exhibits. To the extent Airus intended for this paragraph to be covered by its motion, the Board will grant the motion for

confidential treatment of the bracketed materials in Paragraph 23 pursuant to Iowa Code § 22.7(3). The Board finds that this competitively sensitive information about steps another company took to respond to a call completion problem involving Intelpeer constitutes trade secret information.

The bracketed material in Paragraph 24 consists of a statement referring to Intelpeer's response to a data request about other call completion complaints involving certain destinations. The Board will deny the motion for confidential treatment of the bracketed material in Paragraph 24. Airus has not established that the statement constitutes trade secrets. However, the Board will grant the motion for confidential treatment of Footnote 13 pursuant to Iowa Code § 22.7(3). Footnote 13 contains detailed trade secret information about Intelpeer's call routing process and response to the complaints mentioned in Paragraph 24.

The bracketed material in Paragraph 25 contains a statement describing the availability of certain information. The Board will deny Airus' motion for confidential treatment of Paragraph 25. Airus has not established that the statement constitutes trade secrets or otherwise warrants protection from public disclosure.

The bracketed material in Paragraph 26 contains details about and language from a contract between Intelpeer and another carrier. The Board will grant Airus' motion for confidential treatment of this competitively sensitive information pursuant to Iowa Code § 22.7(3).

The bracketed material in Paragraph 27 contains Intelpeer's answer to a data request about the tests it conducted to determine if an intermediate carrier could

complete calls. The Board will deny Airus' request for confidential treatment of this information. Airus has failed to establish that the information about when testing was done constitutes trade secrets or otherwise warrants protection from public disclosure.

The bracketed material included in Paragraph 30 was also included in OCA's report in the *Frahm* case, Docket No. FCU-2013-0007. OCA did not object to Airus' request for confidential treatment of the same information in Docket No. FCU-2013-0007; the Board granted that request on July 1, 2016. The Board will grant Airus' request for confidential treatment of Paragraph 30 under Iowa Code § 22.7(6).

The bracketed material in Footnote 28 contains information about action Airus took with respect to a certain carrier. Again, it appears the same information was included in OCA's Report in Docket No. FCU-2013-0007 where the Board granted Airus' motion for confidential treatment. The Board will grant Airus' motion for confidential treatment of Footnote 28 pursuant to Iowa Code § 22.7(6).

Based on the Board's decisions with respect to Airus' motion for confidential treatment, OCA's motion for an order removing the confidentiality designations from the Report is accordingly granted, in part, and denied, in part.

#### **CLARIFICATION OF JULY 1, 2016, ORDER**

Finally, the Board observes there are contradictory conclusions in the July 1, 2016, "Order Granting, in Part, and Denying, in Part, Requests for Confidential Treatment Filed January 26, 2015, March 30, 2015, and April 27, 2015, and

Responding to Motions to Remove Confidentiality Designations” issued in this docket. In that order, the Board responded to requests for confidential treatment filed by another carrier involved in this proceeding, Impact Telecom, Inc. (Impact). Impact had requested confidential treatment of Paragraph 43, among other parts of OCA’s Report. A drafting error on page 15 resulted in including Paragraph 43 in the list of paragraphs for which the Board was granting confidential treatment; on page 16, the Board denied the request for confidential treatment of Paragraph 43.

The Board clarifies that it intended to deny Impact’s request for confidential treatment of Paragraph 43 of the Report. As explained on page 16 of the July 1, 2016, order, the materials in Paragraph 43 designated as confidential contained OCA’s summary description of the results of Impact’s investigation into call completion problems. The Board determined that Impact did not establish that public disclosure of the information would give advantage to its competitors.

### **ORDERING CLAUSES**

#### **IT IS THEREFORE ORDERED:**

1. The request for confidential treatment filed by Airus, Inc., on February 3, 2015, is granted, in part, and denied, in part, as described in the body of this order.
2. The information shall be held confidential by the Board subject to the provisions of 199 IAC 1.9(8)(b)(3).

3. Pursuant to 199 IAC 1.9, Airus, Inc., shall have 14 days from the date of this order to initiate court action to prevent disclosure of the information for which confidential treatment is denied, if it so chooses.

4. The motion to remove confidentiality designations filed by the Office of Consumer Advocate on February 2, 2015, is granted, in part, and denied, in part, as discussed in this order. Within 21 days of the date of this order, Consumer Advocate shall file revised versions of its Report on Investigation and Reply to Proposed Solutions to reflect confidentiality designations based on this order.

5. The "Order Granting, in Part, and Denying, in Part, Requests for Confidential Treatment Filed January 26, 2015, March 30, 2015, and April 27, 2015, and Responding to Motions to Remove Confidentiality Designations" issued in this docket on July 1, 2016, is clarified as explained on page 14 of this order.

**UTILITIES BOARD**

/s/ Geri D. Huser

/s/ Elizabeth S. Jacobs

ATTEST:

/s/ Trisha M. Quijano  
Executive Secretary, Designee

/s/ Nick Wagner

Dated at Des Moines, Iowa, this 3<sup>rd</sup> day of August 2016.